STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JARED LAPORTE, JACOB LAPORTE, and RYAN THOMAS LAPORTE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRENDA CRONKRIGHT,

Respondent-Appellant.

UNPUBLISHED
May 10, 2005

No. 259766
Saginaw Circuit Court
Family Division
LC No. 01-025767-NA

Before: Cooper, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order of November 30, 2004, which put into effect the previously suspended order of August 5, 2004, terminating her parental rights to the minor children under MCL 712A.19b(3)(i) and (m). The trial court suspended implementation of the earlier order pursuant to an *Adrianson*[1] agreement. We affirm.

Respondent is the mother of eight children. Respondent's oldest child was removed from her care in 1990 because of physical and sexual abuse. This child was placed in a full guardianship with relatives until she could live independently. Respondent's next seven children were all fathered by John LaPorte who had his parental rights terminated in 2001 after it was determined that, among other abusive actions, he had had sexual intercourse with one of his daughters.[2] These seven children were made temporary wards of the court, with the two female children being placed in foster care and the five male children remaining in respondent's care, while respondent worked towards reunification with her daughters. In 2002, the oldest male child turned seventeen years old and the court dismissed its jurisdiction. Also, in 2002, respondent's parental rights to her two remaining daughters were terminated by voluntary release after respondent admitted that reunification was unlikely due to her continued relationship with a

[1] *In re Adrianson*, 105 Mich App 300; 306 NW2d 487 (1981).

[2] John LaPorte is not a party to this appeal.

registered sexual offender. In 2003, respondent's parental rights to another son were terminated by voluntary release. In 2004, the Family Independence Agency (FIA) filed the termination petition for this case involving the three children who remained in the home, alleging among other things that respondent's mental health issues endangered the children.

On June 28, 2004, respondent entered a plea of admissions to the petition's allegations with the understanding that the trial court would enter an *Adrianson* order. The trial court accepted this plea, took judicial notice of the lower court record that contained information about respondent's history of neglect and prior terminations, and assumed jurisdiction over the three minor children. It then found that respondent's admissions established by clear and convincing evidence that possible termination was warranted under MCL 712A.19b(3)(i) and (m), but it suspended implementation of the termination order pursuant to an *Adrianson* order that allowed respondent the opportunity to comply with appropriate conditions. Included in the *Adrianson* order was the requirement that respondent participate in counseling to address how her relationship with the convicted sex offender jeopardized the return of her children. It also required her to discontinue this relationship. Following a November 29, 2004 permanency planning hearing, the trial court found that respondent's relationship with the sex offender had continued in violation of the *Adrianson* order. The trial court entered an order enforcing the previously suspended termination order.

Respondent first argues that the trial court clearly erred in assuming jurisdiction since respondent had not used unreasonable force in disciplining one of her children. This issue was not preserved for appellate review since matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights. *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995) citing *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). Furthermore, even if this issue were properly before this Court, we would find that respondent's plea provided more than the necessary preponderance of evidence for the court to assume jurisdiction. Respondent's plea included admissions about past neglect petitions and prior terminations (this evidence was also included in the lower court file of which the trial court took judicial notice). Based on the doctrine of anticipatory neglect, this information alone was sufficient basis for the court's jurisdiction over the children. Therefore, even if respondent had not admitted the replacement allegations concerning her discipline of the child, the outcome of the adjudicative hearing would not have been different. The trial court did not err in assuming jurisdiction over the minor children.

Also, contrary to respondent's claim, a review of the April 15, 2004 order that followed the preliminary hearing shows that the trial court made the requisite finding under MCR 3.965(D) regarding efforts made to prevent the removal of the children from the home.

Next, respondent argues that the prohibition against double jeopardy used in criminal cases should be applied by analogy to termination of parental rights cases. This argument fails according to a United States Supreme Court opinion, which noted that natural parents have no "double jeopardy" defense against repeated state termination efforts. *Santosky v Kramer*, 455 US 745, 764; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

Respondent failed to preserve her next argument that the *Adrianson* order set her up for failure because she did not object to its conditions at the trial level. However, this Court recently

held that *Adrianson* orders violate both statutory law and court rules. *In re Gazella*, 264 Mich App 668, 674; 692 NW2d 708 (2005). Therefore, this Court will next examine whether the termination order should be set aside because it is likely that, but for the illegal *Adrianson* order, respondent would never have pleaded the admissions used by the trial court to justify both its assumption of jurisdiction and termination order.

We find that, as in *In re Gazella*, the trial court's use of an illegal *Adrianson* order in this case was harmless error. Respondent's history of neglect and prior terminations by voluntary releases were all a matter of court record and provided sufficient evidence for the court's assumption of jurisdiction and order of termination. The opportunity provided to respondent through use of the illegal *Adrianson* order just gave respondent additional time in which to prove her parenting skills. Even though respondent now complains that the *Adrianson* order asked too much of her in too little time, we conclude otherwise. The FIA had long asked respondent to receive counseling to address several issues, most troubling of which was respondent's history of sexual abuse. In addition, respondent had known since 2002 that her relationship with a registered sex offender placed the minor children in danger. The conditions of the *Adrianson* order were not unreasonable.

Since termination was warranted despite the use of an illegal *Adrianson* order, the only chance that respondent had to avoid termination was if the trial court determined that termination was clearly against the children's best interests. However, as in *In re Gazella*, such a finding was unlikely. Given her history and poor prognosis for improvement, it does not appear that respondent could have established by clear and convincing evidence that termination of her parental rights was clearly not in the children's best interests.

Next, respondent argues that the trial court erred in terminating her parental rights under MCL 712A.19b(3)(i) and (m). This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). We agree that it was error to base termination upon subsection 19b(3)(i). Although neglect and abuse were undoubtedly the underlying causes of respondent's prior terminations, she voluntarily released her parental rights and there was no judicial determination that such neglect and abuse existed. However, this error was harmless pursuant to *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000), since the trial court properly based termination of respondent's parental rights on another statutory ground, namely, subsection 19b(3)(m). Subsection 19(b)(3)(m) applies to respondent since section 2(b) proceedings were initiated twice in the past, and her rights were voluntarily terminated with regard to three children following the initiation of these 2(b) proceedings.[3] Therefore, the trial court did not clearly err in terminating respondent's parental rights upon this ground.

Lastly, although respondent is correct in her claim that the trial court failed to make a finding as to the best interests of the children, such a finding was not required. Neither statutory

[3] We note that the doctrine of anticipatory neglect is recognized by Michigan courts. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001).

law nor court rule requires the trial court to do so when no party offered best interests evidence. See *In re Gazella*, *supra* at 678.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra